

June 13, 2019

Mayor Bob Sampayan

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Via Email

Re: Brown Act cure and correct demand for actions taken by the Vallejo City Council on May 14, 2019

Dear Mayor Sampayan and members of the Vallejo City Council:

This letter is to call your attention to what we believe are substantial violations of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of actions taken by the Vallejo City Council. The nature of the violations are as follows.

In its meeting on May 14, 2019, the Vallejo City Council, through presiding officer Mayor Sampayan, allowed a heckler who has a business relationship with Councilmember Hakeem Brown to unlawfully disrupt a public meeting, despite enforcing decorum on speakers who favor police reform; engaged in unconstitutional viewpoint discrimination by selectively admonishing those other speakers but not the heckler; used the opportunity to declare an unecessary recess; allowed the Vallejo Police Department (VPD) to declare an unecessary unlawful assembly and illegally clear council chambers; cancelled the meeting through VPD's statements, threats of arrest, and objectively unreasonable show of physical force, which included Kevlar helmets and unholstered batons; and unlawfully resumed the meeting after many of the individuals who sought to express themselves had left on threat of arrest. In addition, VPD Captain Lee Horton appeared to rely on racially discriminatory criteria when notifying people the meeting would illegally resume.

The public comment period of the May 14, 2019 city council meeting began with several individuals who spoke about the need to reform VPD. Mayor Sampayan admonished the audience not to interrupt speakers on several occasions, including when they made supportive comments.

One speaker, Jamilia Land, criticized Vallejo Councilmember Hakeem Brown's record on police reform. Land's comments were directed for a short time at Councilmember Brown, rather than Council as a whole. Mayor Sampayan admonished Land for this, and she concluded her remarks without further incident.

As Land was concluding her remarks, Sgt. Steven Darden walked along the East wall of the city council chambers and stood within arm's reach of Tausha Johnson, an <u>event consultant and mentor</u> for Councilmember Brown's nonprofit Neighborhood Rising. Johnson has been affiliated with Neighborhood Rising since February 2017.

Mayor Sampayan recognized Angela Giles, the aunt of Ronell Foster, who was killed by Vallejo police officer Ryan McMahon in 2018. As Giles approached the lectern, the room fell quiet.

It was during this period of relative quiet, a full 25 seconds after Land stopped speaking, that Johnson rotated her body toward the Southeast quadrant of the room and began to loudly <u>defend</u> Councilmember Brown from Land's prior critique. Johnson began, "Y'all have to be careful beating up on the ones who's trying to—" before she was drowned out by crosstalk. We did not observe, and have not subsequently been alerted to, any attempt to request that Johnson follow the rules of decorum.

For a short time, Johnson and the families of people killed by police argued with each other about Councilmember Brown's record from across the room. Despite previously admonishing individuals who favored police reform for speaking out of turn, including when shouting supportive comments to speakers they agreed with, Mayor Sampayan declined to intervene or restore order. Giles, the recognized speaker, stood at the lectern, waiting for her turn to speak. However, Johnson continued to disrupt the meeting as Sgt. Darden stood next to her with his hands clasped in front of him.

As Johnson continued arguing in defense of Councilmember Brown with people across the room, Willie McCoy's brother Kori spoke up, saying, "He saw the tape," referring to body camera footage of his brother's death. He added, "He [Brown] saw the tape. What'd he say? You can't defend him! Because he's a crook! Don't try to defend him." At this point, Vallejo resident Mark Lampkin placed his hand around Johnson's shoulder in an apparent attempt to calm her. It was clear that absent the disruption made in defense of Councilmember Brown, the meeting would have proceeded apace.

Several individuals then approached Johnson. Although the room was tense, all parties conversed in a civil and peaceable manner.

The city council began leaving the room as more VPD officers, including Captain Horton, arrived.

It was at this point that Councilmember Brown left the dais to speak with Willie McCoy's cousin David Harrison. Video of this exchange indicates that it was peaceful. However, Councilmember Brown's attention was then diverted past Harrison. He says to someone off-camera, apparently Kori McCoy, "You don't know me, man — real talk," before attempting to move through the crowd toward McCoy, challenging him all the while. McCoy is heard saying, "Man, get up out my face, man," to which Councilmember Brown replies, "I'm not going anywhere, bruh. I'm not going anywhere."

It was at this point that Captain Horton grabbed Councilmember Brown by the left shoulder, redirecting him away from McCoy, who did not follow Brown. As Horton began leading Councilmember Brown back toward the dias, McCoy can be heard saying, "I know you a sellout. I know you a fake sellout. I know you on the take from the police." Brown turned again to face McCoy, but was again redirected toward the dias and private chambers by Mayor Sampayan and another person.

At this point the city council retired to chambers. This was followed by several minutes of confusion and frustration among those present. Still, the overall tenor of the assembly remained peaceable.

Nonetheless, numerous VPD officers streamed into the room and took up positions of advantage. The crowd was allowed to remain for several minutes. Many were frustrated. Still, the tenor remained peaceable.

Angela Giles then briefly addressed the crowd. When she concluded speaking, Captain Horton prevented further speakers from using the lectern microphone, stating that it was time to go.

"I don't want anybody to get hurt," Captain Horton said. "Please go home."

Instead, Foster's mother Paula McGowan began speaking to the crowd about her son. She concluded her remarks with, "Let us live! They need to be held accountable for what they're doing. They're killing us out here. The board — the panel — ya'll are not doing nothing. The DOJ, the District Attorney, City Attorney, need to come in and do their job. They need to get up of their ass and do their job, okay?"

McGowan then began recognizing the families of others killed by VPD officers. Almost immediately, Captain Horton began making a "wrap it up" motion with his index finger. Lt. Steve Cheatham then bellowed, "Okay folks, you need to clear the chambers! Clear the chambers!" The overall tenor of the crowd remained peaceable. Nonetheless, Lt. Cheatham then declared an unlawful assembly, and officers began directing people to leave the building on threat of arrest.

As officers advanced on the crowd. Lt. Cheatham continued to shout, "Unlawful assembly," "clear the chambers," and "outside." The crowd chanted, "No justice, no peace." As the crowd filed out of City Hall, additional officers streamed in. More than a dozen officers soon arrived, some wearing Kevlar helmets and carrying batons. They formed a skirmish line to prevent individuals from re-entering City Hall. The skirmish line included Officer Jordon Patzer, who participated in the killing of Willie McCoy. Vallejo Police maintained their skirmish line until many of the speakers favoring police reform left the area around Vallejo City Hall.

Long after VPD declared an unlawful assembly, and after many people had left, Captain Horton approached several individuals and groups and told them, in a hushed tone, that the meeting would soon restart. Several people expressed shock at this. Every verbal and non-verbal communication we observed from VPD had indicated the meeting was canceled, City Hall was shut down, and those who remained in the vicinity risked arrest

Moreover, several people noted at this time that Captain Horton appeared to approach white and/or older residents, but did not approach other people who were present. This is consistent with our observations.

The belief the meeting was formally adjourned was widespread among those in attendance, as indicated by numerous social media posts. These posts include expressions from members of the community who are familiar with parliamentary procedure and city processes. They also include an admission from at least one current city councilmember about the nature of the order to leave.

We are familiar with Cal. Gov. Code sec. 54957.9, which allows for a public meeting to be closed if it is "willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting[.]" We see that provision as inapposite here. The meeting was disrupted, but in our view, it was not disrupted by the people who were there to speak about their loved ones.

This incident is especially unseemly given the fact that it was attended by City Attorney Claudia Quintana and Assistant City Attorney Kelly Trujillo, who is a supervisor in that office.

Let us be clear: any action taken subsequent to the unlawful assembly order was not in compliance with the Brown Act because it occurred as the culmination of a discussion in what amounted to a closed session of a matter which the Act does not permit to be discussed; and there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the Vallejo City Council that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

In the event it appears to you that the conduct of the Vallejo City Council specified herein did not amount to the taking of action, we call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), we demand that the Vallejo City Council cure and correct the illegally taken action as follows:

- 1. Void any action taken on May 14 that occurred subsequent to the unlawful assembly order.
- 2. Hold a properly-noticed meeting regarding same.
- 3. Hold a properly-noticed meeting regarding the illegal closure and resumption of the meeting.

- 4. Provide remedial training to all VPD officers and command staff regarding Vallejoans' rights under the Brown Act, Article 1 of the California Constitution, the First Amendment of the United States Constitution, and the Vallejo Sunshine Ordinance.
- 5. Undertake such training yourselves.
- 6. Refer to the Solano County District Attorney for investigation the question of whether the meeting was willfully disrupted, including whether any agreement to do so was formed in advance of the meeting, as well as any violations of the Brown Act.
- 7. Investigate whether any elected official, departmental director, or other managerial city employee engaged in a knowing, willful and deliberate violation to discharge their duties pursuant to Section 2.08.140 of the Vallejo Sunshine Ordinance and, if so, to sanction any such person in accordance with that section.
- 8. Share the results of any investigation described in section 7 with the public.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave us no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we will also ask the court to order you to pay our court costs and reasonable attorneys' fees in this matter, pursuant to Section 54960.5.

Sincerely, Your neighbors at Open Vallejo

cc: Solano County District Attorney California Department of Justice, Civil Rights Enforcement Section